

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:07cr61-2**

UNITED STATES OF AMERICA,)
)
)
 Vs.) ORDER
)
)
 EMMANUEL ELLIS KELLER,)
)
)
 Defendant.)
)

THIS MATTER is before the court on defendant's Motion for Revised or Supplemental Pre-Sentence Investigation Report (#550). Review of this matter reveals that this action was remanded to this court for resentencing prior to the Sentencing Commission making the Fair Sentencing Act of 2010 retroactive and before the Court of Appeals for the Fourth Circuit issued its decision in United States v. Simmons, ___ F.3d ___, No. 08-4475 (4th Cir. August 17, 2011). Defendant requests that, in advance of re-sentencing, Pretrial Services be instructed to supplement its presentence report as defendant was previously enhanced by a prior felony he believes is now covered by Simmons and that the amount of crack cocaine reasonably foreseeable by defendant may also come into play under the FSA. Defendant reflects consultation with counsel for the government, who does not oppose the relief sought.

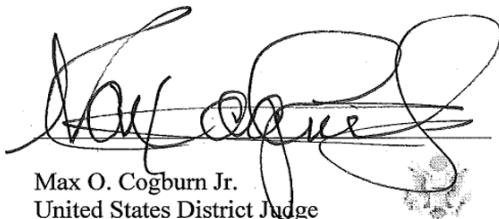
For good cause shown the relief will be granted, and Pretrial Services instructed to conduct whatever additional investigation is warranted and to submit a supplemental PSR as soon as possible.

ORDER

IT IS, THEREFORE, ORDERED that defendant's Motion for Revised or Supplemental Pre-Sentence Investigation Report (#550) is **GRANTED**, and Pretrial Services is directed to conduct whatever additional investigation is warranted under Simmons and the FSA and to submit a supplemental PSR as soon as possible.

The Clerk of Court is instructed to send a copy of this Order to United States Probation Officer Baker.

Signed: October 6, 2011



Max O. Cogburn Jr.
United States District Judge